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TO: Operations & Regulations Committee

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DATE: June 11, 2012

SUBJECT: Executive Summary – Limiting the Applicability of Part 1627 to Exempt Certain Grants Falling Outside Section 1006(a)(1)(A) of the LSC Act

While the OIG does not object to a regulatory change that would allow oversight of most third-party payments in the TIG program through adequate contracting procedures rather than subgrant procedures, for the reasons discussed in the attached memorandum, it continues to believe that modification of the subgrant rule through regulatory action is required to achieve that goal. The attached memorandum is provided to explicate the distinction between subrecipients and ordinary vendors in Part 1627 and to explain why interpretive guidance would be an inappropriate mechanism for redrawing the line between these two categories of third-party payees.

Specifically, the OIG is concerned that interpretive guidance is inappropriate in the present case because on their face, the terms of the Part 1627 require a broader reading than that guidance would give them. Interpretive guidance limiting the application of Part 1627 to third-party payments that support the provision of legal services would effectively narrow the

definition of “recipient” found in the rule, 45 C.F.R. § 1627.2(a), and/or shift the focus of 45 C.F.R. § 1627.2(b)(1) from “*the recipient’s* programmatic activities” (emphasis added) to the more general programmatic purpose of LSC as a whole. The OIG believes that the LSC Act requires rulemaking procedures for modifications of this magnitude. 42 U.S.C. § 2996g(e).

In the attached memorandum, the OIG reviews at length the language of Part 1627 and the contemporaneous regulatory history that accompanied the enactment of that Part. It begins by locating the subgrant rule within the context of LSC’s statutory grant-making authority. Section 1006(a) authorizes LSC to make three different types of grants. Some of those grants, Section 1006(a)(1)(A) grants, are to be provided “for the purpose of providing legal assistance to eligible clients ...,” while other grants, Section 1006(a)(3) grants, are provided for activities such as “research ..., ... training and technical assistance, and ... clearinghouse [services].” 42 U.S.C. § 2996e(a). TIG grants most likely fall within Section 1006(a)(3). Unlike the LSC Act itself and Part 1600, Part 1627 expands the definition of “recipient” to include all LSC grantees, whether or not they are engaged in directly providing legal services to eligible clients. That is, Part 1627 expressly includes Section 1006(a)(3) grantees. An interpretation that limits the application of Part 1627 to payments that directly support the provision of legal services would read Section 1006(a)(3) out of the definition of “recipient” in LSC’s subgrant rule.

As discussed in greater detail in the attached memorandum, the interplay of the terms “recipient” and “subrecipient” in Part 1627 dictates a reading of the term “programmatic activity” that is not coterminous with the provision of legal services to eligible clients. Put succinctly, when Part 1627 refers to the programmatic activities of the recipient at issue, it is referring to the grant programs of Section 1006(a)(1)(B) and 1006(a)(3) grantees, as well as Section 1006(a)(1)(A) grantees. It looks to the activities and program of the particular recipient, whether that recipient is a Section 1006(a)(1)(A) grantee or, as in the case of TIG grantees, a

Section 1006(a)(3) grantee. The attached memorandum discusses other specific features of Part 1627 that lend weight to this reading.

In addition, the attached memorandum discusses the contemporaneous regulatory history of Part 1627. LSC's statements concerning Part 1627 in the Federal Register indicate that the term "programmatic activities" was intended to reach more activity than the provision of legal services to eligible clients. Legal Services Corp., 45 C.F.R. Part 1627, Subgrants, Fees and Dues, Final Rule [hereinafter "Final Rule"], 48 Fed. Reg. 54206, 54207 (Nov. 30, 1983). When it published Part 1627, the Corporation expressly noted that the rule reached certain third-party payees who receive LSC funds for purposes other than the direct provision of legal services. It is also telling that the Corporation linked the term "programmatic activities" with the concept of allowable costs in its discussion of the rule, stating: "Aside from the exceptions in the definition, all transfers of funds on a grant or contract basis are intended to be included as transfers related to a recipient's program." *Id.*

Finally, the OIG observes in the attached memorandum that even if it were possible to limit the scope of the term "programmatic activity" in the subgrant rule, such an interpretation would probably not put the third-party payments identified as subgrants in the OIG's TIG Audit beyond the reach of that rule. By statute, all Section 1006(a)(3) grants must be made to support activities related to the provision of legal assistance regardless of their immediate purpose. Consequently, any third-party payees who receive LSC funds to carry out the immediate purpose of a Section 1006(a)(3) grant or to carry out the central activities it was intended to fund must be conducting activities related to the provision of legal assistance. 42 U.S.C. § 2996e(a)(3).

For the reasons discussed above and in the attached memorandum, the OIG believes that should LSC decide to exempt certain third-party payments from its subgrant rule, such an exemption is properly accomplished through a regulatory process that amends text of Part 1627.